

Filed for intro on 02/24/97  
SENATE BILL 1469 By  
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HOUSE BILL 1621  
By Hargrove

AN ACT to amend Tennessee Code Annotated, Section 39-11-116,  
relative to forfeiture of property constituting illegal  
proceeds of criminal activity and certain personal property  
used to commit criminal offenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

TCA §39-11-116 is amended by deleting the present language and substituting the  
following therefore:

SECTION 1. Legislative Intent.

(a). The general assembly hereby finds and declares that an effective means of  
detering criminal acts committed for financial gain is through the forfeiture of profits and  
proceeds acquired and accumulated as a result of such criminal activities.

(b). It is the intent of the general assembly to provide the necessary tools to law  
enforcement agencies and district attorneys general to punish and deter the criminal activities of  
professional criminals and organized crime through the unitary enforcement of effective  
forfeiture and penal laws. It is the intent of the general assembly, consistent with due process of  
law, that all property acquired and accumulated as a result of criminal offenses be forfeited to  
the State of Tennessee and that the proceeds be used to fund further law enforcement efforts in  
this state.

(c). It is further the intent of the general assembly to protect bona fide interest holders  
and innocent owners of property under this Chapter. It is the intent of the general assembly to

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provide for the forfeiture of illegal profits without unduly interfering with commercially protected interests.

## SECTION 2. Definitions.

As used in this Chapter the following definitions apply:

(a). "Attorney general" means the district attorney general, and their assistants.

(b). "Interest holder" means a secured party within the meaning of Tennessee Code Annotated Section 47-9-105(m), a mortgagee, lien creditor, one granted a possessory lien under law, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value. A person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an interest holder.

(c). "Owner" means a person, other an interest holder, who has an interest in property. A person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an owner.

(d). "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible or intangible.

## SECTION 3. Criminal Proceeds subject to forfeiture.

(a). Any property, real or personal, directly or indirectly acquired by or received in violation of any statute or as an inducement to violate any statute, or any property traceable to the proceeds from such violation, is subject to judicial forfeiture, and all right, title, and interest in any such property shall vest in the state upon commission of the act giving rise to forfeiture.

(b). In any in rem forfeiture action in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution, or other like fungible property--

(1) it shall not be necessary for the State to identify the specific property involved in the offense that is the basis for the forfeiture action; and

(2) it shall not be a defense that the property involved in such an action has been removed and replaced by identical property.

#### SECTION 4. Property exempt from forfeiture.

(a). No interest in any property described in Section 3 of this Chapter shall be subject to forfeiture when one of the following conditions are established:

(1) if the owner or interest holder acquired the property before the conduct alleged to give rise to its forfeiture;

(2) if the owner or interest holder acquired the property during or after the conduct alleged to give rise to its forfeiture, and he acquired his interest as a good faith purchaser for value, or acquired his interest in a commercially reasonable manner, and he:

(A) acted reasonably to prevent the conduct giving rise to forfeiture; or

(B) did not know of the acts giving rise to forfeiture.

(b). The state may stipulate that the interest of an owner or interest holder is exempt from forfeiture upon presentation of proof of the claim. The state shall file such stipulation with the court exercising jurisdiction over the forfeiture action and such filing of stipulation shall constitute an admission by the state that such interest is exempt from forfeiture. If such stipulation is submitted then no further claim, answer or pleading shall be required of the stipulated owner or interest holder and a judgment shall be entered exempting such interest from forfeiture.

(c). If equipment and fixtures are seized while in possession of someone other than the owner, or are on premises which are padlocked and the owner of the equipment and fixtures

has no interest in the padlocked premises, then the owner may obtain return of his equipment and fixtures if he:

- (1) did not know of the act giving rise to forfeiture; or
- (2) acted reasonably to prevent the conduct giving rise to forfeiture.

#### SECTION 5. Jurisdiction and Venue.

(a). Jurisdiction in a civil forfeiture action under this Chapter extends to the Chancery and Circuit courts of this State, and general sessions courts for personal property where the value of personal property subject to forfeiture does not exceed the jurisdictional limits of the court, over the following:

- (1) all interests in property if the property for which forfeiture is sought is within this state at the time the action is filed; and
- (2) the interest of an owner or interest holder in the property for which forfeiture is sought if the owner or interest holder is subject to the personal jurisdiction of the court.

(b). In addition to any other provision of law, a proceeding for forfeiture under this Chapter may be maintained in the judicial district in which any part of the property is found or in the judicial district in which a criminal prosecution could be maintained against an owner or interest holder for the conduct alleged to give rise to the forfeiture. Any court with jurisdiction pursuant to this section may issue and cause to served in any other judicial district such process as may be required to bring before the court the property that is the subject of the forfeiture action.

#### SECTION 6. Evidence.

In a forfeiture action under this Chapter, either party may introduce the following evidence pertaining to the issue of whether the property or proceeds were known to be from some form of criminal offense:

- (a) that the property was involved in a financial transaction that was conducted or structured to evade the reporting requirements of any state or federal law;

(b) that money or any negotiable instrument was found in proximity to contraband or instrumentalities of an offense;

(c) that the property was involved in a financial transaction that was conducted with the use of a false or fictitious name;

(d) that a financial transaction involving the property was structured so as to falsely report the actual consideration or value of the transaction.

#### SECTION 7. Procedure for Seizure of Property.

(a). Any property subject to forfeiture under this Chapter may be seized by the attorney general, their agents, or any law enforcement officer when acting pursuant to a lawful arrest or search, the execution of a search warrant, a petition to abate a nuisance, or a court order. Whenever property is seized under this Chapter, it may be removed by the seizing agency or official to a place to secure the property, it may be preserved as evidence, it may be padlocked as ordered by a court of record, it may be secured by depositing in an interest bearing account as approved by a court of record or it may be secured as otherwise authorized by law regarding the maintenance, storage, or disposition of such seized property.

(b). Upon seizure of property for forfeiture under this Chapter the seizing agency or official shall cause to be delivered a written receipt and notice of seizure to the possessor, owner and interest holder as determined from public records. The notice shall list and describe generally the property seized, the agency or official responsible for the seizure and shall state the procedure for obtaining return of the property. The seizing agency shall deliver a copy of the notice to the district attorney general of the judicial district where the seizing agency is located or of the judicial district where the seizure occurred.

(c). Upon the seizure of personal property for forfeiture the seizing agency shall within five (5) working days apply ex parte for a forfeiture warrant from a judge authorized to issue a search warrant. Upon a finding that probable cause for forfeiture exists, a forfeiture warrant shall issue. The warrant shall be based upon proof by affidavit that there is probable cause that the

owner's interest in the seized property is subject to forfeiture. In the event a forfeiture warrant is not issued then the property shall immediately be returned unless the property is to be retained for evidence in a criminal proceeding. No forfeiture action for personal property may be filed without the issuance of a forfeiture warrant.

(d). No claim need be filed by an interest holder and no interest holder may have his interest forfeited without service of a complaint for forfeiture under this Chapter.

(e). The attorney general may file a notice of lien *lis pendens* against any real property subject to forfeiture under this Chapter. No fee shall be charged for the recording of such lien. The lien shall generally describe the real property and the reason for forfeiture. The notice shall specify the court and jurisdiction in which the action is pending and, if known at the time of the filing of the notice, the case number of the action. After the filing of the notice of lien *lis pendens* the State shall, as soon as is practicable, serve a copy of the notice upon any person who has a duly recorded interest in the property as reflected in public records.

(f). The filing of a notice of lien *lis pendens* under this Chapter creates, from the time of its filing, a lien in favor of the state on the property described therein and subject to forfeiture under this Chapter against the persons named in the notice.

(g). There shall be no seizure or attachment of real property unless and until a hearing is conducted with due notice to the owner.

(h). A possessory lien of a person from whose possession property subject to forfeiture is seized is not affected or prejudiced by a seizure for forfeiture under this Chapter. Such a lien shall take precedence over all other liens.

(i). A person who acts in good faith and in a reasonable manner to comply with an order of the court or a request of a peace officer while enforcing the provisions of this Chapter is not liable to any person for acts done in furtherance with the order or request.

#### SECTION 8. Procedure for Judicial forfeiture of property.

(a). If real or personal property is subject to forfeiture under this Chapter the attorney general may initiate an in rem forfeiture proceeding in the Circuit, Chancery, or general sessions court of the county where the property is located or where the conduct giving rise to forfeiture occurred. If the property is beyond the jurisdiction of the court the attorney general may initiate an in personam action against the owner or interest holder if he is subject to the jurisdiction of the court. The complaint shall state a description of the property to be forfeited and the reasons for forfeiture under this Chapter. No filing fees or other costs shall be charged to the State.

(b). If personal property is sought to be forfeited the complaint shall state the date the forfeiture warrant was issued. However, no complaint shall be dismissed for defects or insufficiencies in the forfeiture warrant. The complaint shall be served by registered mail at the last known address of the owner, if known, or the person in possession at the time of seizure. In the event the owner or possessor of the property does not answer the complaint the state may move for a default judgment. An interest holder shall, however, be served with the complaint for forfeiture prior to any disposition of the property.

(c). The court shall proceed as soon as practicable to a hearing and determination of the issue of forfeiture. The State shall notify the appropriate state official or commissioner as to the pendency of the judicial forfeiture action when such property is pending administrative forfeiture action. The filing of a complaint under this section shall operate as a stay of any pending administrative forfeiture proceedings. The State shall have the burden to prove by a preponderance of evidence that the property is subject to forfeiture under this Chapter and that one or more acts described in Section 3 giving rise to forfeiture occurred after the effective date of this Chapter, regardless of when the property was originally acquired, as long as the owner's interest in the property appreciated following the commission of an act giving rise to forfeiture. Such forfeiture action shall be commenced within five (5) years after the conduct giving rise to forfeiture terminates or the cause of action accrues, whichever is later. Any party who claims an interest in the property subject to forfeiture must first establish by a preponderance of the

evidence that he is an owner or interest holder in the property seized before other evidence is taken. The claimant has the burden of establishing his standing to assert the claim.

Notwithstanding any other provision of law, no other claims, pendent claims or counterclaims may be filed in an action for forfeiture under this Chapter.

(d). In establishing a preponderance of the evidence for forfeiture, a rebuttable presumption exists that the property of any person is subject to forfeiture if the state establishes all of the following:

(1) The conduct giving rise to forfeiture occurred;

(2) The person acquired the property during the period of the conduct giving rise to forfeiture or within a reasonable time after that period; and,

(3) There is no likely source for the property other than the conduct giving rise to forfeiture.

(e). Property subject to forfeiture may be located in any county or state. Upon a finding by the court that the evidence establishes that the property is subject to forfeiture the judge shall enter a judgment of forfeiture of all property subject to forfeiture and shall order that title to the property be vested in the State of Tennessee from the date that the conduct which gave rise to the forfeiture occurred subject to any exemptions provided for in this Chapter.

(f). Upon entry of the judgment of forfeiture and the recording of the same in the county and state where such property is located, title to the property shall vest in the State and shall thereafter be disposed as provided for in Sections 13-14. If the property cannot be located or is beyond the jurisdiction of the court, the court shall enter a judgment against the owner equal to the value of the property ordered to be forfeited. The court may use its contempt powers to enforce any orders of forfeiture of property located beyond the jurisdiction of the court, and other orders in furtherance of the purpose of this Chapter.

SECTION 9. Procedure for return of property seized.



(a). Only an owner or interest holder may make a claim for return of property seized for forfeiture or otherwise contest the forfeiture under this Chapter. In the event of a seizure for forfeiture under this Chapter, the property shall not be subject to replevin, conveyance, or attachment, but is deemed to be in the custody of the seizing agency or official.

(b). If after thirty (30) days from the date of the seizure of the property or the filing of a notice of lien lis pendens no administrative or civil forfeiture action has been initiated the owner or interest holder may petition the chancery court in the judicial district where the seizure occurred for return of the property seized or to have the notice of lien lis pendens released. The district attorney general having jurisdiction over the judicial district where the petition is filed shall be served with a copy of the petition. If no administrative or civil forfeiture action is commenced within thirty (30) days after the appropriate official has been served with the petition for return of property or release of lis pendens then the chancery court shall order the property be returned or the lien released.

(c). Such order to return property or to release a lien shall not bar any action to forfeit the property in a future proceeding but such property may not be seized or lien filed against until such time as a forfeiture proceeding seeking forfeiture of the property has been filed. At any time subsequent to the seizure of the property by the seizing agency the attorney general may direct the return of the seized property or release any lien filed upon a determination that forfeiture proceedings would be without merit.

(e). After the filing of a forfeiture action under this Chapter, a claimant may file a motion with the court in which the action is pending for the state to show cause why the property, or any portion thereof, should not be returned or the lien released. The court shall conduct a hearing on the motion within twenty-one (21) days from the date such motion is filed. The claimant must first establish by a preponderance of the evidence that he is an owner in the property seized before other evidence is taken. The claimant has the burden of establishing his standing to assert the claim. If the claimant fails to establish standing to assert a claim then the request

shall be denied. If the state then proves that a probability of success on the merits of the forfeiture action exists, the court shall deny the request to return the property or release the lien. If the court finds that the state has failed to prove a probability of success on the merits of the forfeiture action, the court shall order that the property be returned or that the lien be released. If the state proves that a probability of success on the merits exists as to some portion of the property seized or upon which a lien is attached but not on other portions of such property, the court shall order that the portions upon which the state did not meet the burden of proof be returned or the lien released.

#### SECTION 10. Rights of Interest Holders and Owners.

(a). Nothing in this Chapter shall limit or restrict the right of an interest holder in real property that was of record, prior to the filing of the notice of lien lis pendens, to enforce its deed of trust or to take any other action permitted under its deed of trust as long as prior notice is given to the Court and the attorney general who filed the notice in accordance with the provisions of this section.

(b). Pending any proceeding to forfeit real property an interest holder who desires to take action under the mortgage or deed of trust shall give notice to the attorney general who filed the lis pendens of any action to be taken under the mortgage or deed of trust.

(1) If the state has stipulated to the interest holder's exemption from forfeiture of its interest and a judgment has been entered then the interest holder may proceed to foreclose in accordance with its mortgage or deed of trust, subject to the approval or conditions of the Court.

(2) When no judgment has been entered exempting the interest holder's interest from forfeiture, the interest holder may not exercise its right to foreclose its deed of trust on such property unless it gives the official who filed the lis pendens written notice at least twenty (20) days prior to the date of a foreclosure sale and indicates the time, date and place of sale and the balance owing on the debt. Upon receipt of the notice of foreclosure the official who filed the lis pendens may petition the court where the forfeiture action is pending to require that such

foreclosure sale be subject to the approval or conditions of the Court. Upon notice to the interest holder the court may grant such request and upon such conditions as it deems just.

(c). The Court may enjoin any foreclosure sale when probable cause exists that such interest holder is a co-conspirator or accessory to the conduct giving rise to forfeiture.

(d). Upon completion of a foreclosure sale of real property pending forfeiture the interest holder or his trustee shall give written notice of the intended distribution of the proceeds of the sale to the official who filed the lis pendens. The interest holder shall deposit with the clerk of the court where the forfeiture action is pending all proceeds from the foreclosure sale in excess of the debt and fees and expenses secured by its deed of trust. If, however, the court has ordered that the sale be conducted under conditions or subject to the approval of the court, the interest holder shall file with the court proof under oath that such conditions were met and any proceeds of the sale ordered to be deposited with the clerk. If no objection is filed by the official who filed the lien lis pendens then the court shall approve the sale and distribution of proceeds.

(e). Pending any proceeding to forfeit any personal property an owner or interest holder may petition the court exercising jurisdiction over the forfeiture proceeding for possession of said property unless such shall be needed as evidence. The court shall permit the owner or interest holder to obtain possession of the property upon the execution of a bond in favor of the State of Tennessee and for payment of the appraised value thereof at the time of the hearing, the sureties for said bond to be approved by the court. The court shall, upon approval of the bond, permit the owner or interest holder to obtain possession of the property unless it is needed for evidence.

(f). If the state has filed a stipulation that an interest holder has an interest that is exempt from forfeiture, the court may release personal property for sale, to be leased, rented or operated, when the property used for collateral is depreciating in value or when justice dictates, and upon the posting of a bond to insure compliance with this subsection, unless the property is needed for evidence. Upon the court's release for public sale or lease, the interest holder shall

dispose of the property but only by a commercially reasonable public sale or lease and, within ten days of disposition, shall deposit with the clerk of the court where the forfeiture action is pending the amount received at disposition less the amount of the interest holder's encumbrance and reasonable expenses incurred by the interest holder in connection with the sale or disposal including the costs of the bond. For purposes of this subsection "commercially reasonable" shall be a sale or disposal that would be commercially reasonable under Tennessee Code Annotated Section 47-9-504.

(g). If an indictment, information, or arrest warrant is filed against an owner claiming return of property which is subject to a forfeiture action filed under this Chapter and the criminal action alleges the same conduct as the conduct giving rise to forfeiture in a civil forfeiture proceeding, the court in the civil proceeding shall stay civil discovery against the criminal defendant and against the state until the defendant's criminal action is completed.

#### SECTION 11. Protection of seized property.

In the event there is probable cause to believe that any individual having a right to enter real property which is the subject of a forfeiture proceeding under this Chapter is also engaged, or about to engage, in conduct which will result in the diminution of the value of the real property to the State, then the court in which the forfeiture is pending may grant injunctive relief enjoining any such action diminishing the value of the property including the padlocking of the premises or the appointment of a receiver or any other appropriate extraordinary relief.

#### SECTION 12. Sale of Forfeited Property.

Whenever a judgment of forfeiture is rendered under this Chapter, the court may authorize the attorney general to sell the property at public auction subject to the orders and approval of the court. The court, in lieu of such sale, may order that the property be sold by any person having an interest in the real property whose interest has not been forfeited. The proceeds of such sale shall be subject to the orders of the Court.

#### SECTION 13. Disposition of forfeited property.

(a) All property ordered forfeited shall be sold at public auction. The proceeds from all property forfeited and sold at public auction shall be disposed by the court as directed by this Chapter. The attorney general shall first be compensated for all expenses incident to the litigation, as approved by the court. Any such costs for appeals shall be provided for by the trial court upon conclusion of the litigation. The attorney general shall then direct that any public agency be reimbursed for out-of-pocket expenses resulting from the investigation, seizure and storage of the forfeited property. If any property seized and ordered forfeited was taken from the lawful owner through theft or fraud then such property shall be returned to the lawful owner, or resitution provided, as the court determines.

(b). The court shall then award the remainder of the funds as follows:

(1) in the event that the investigating and seizing agency was a state agency the funds shall be distributed to the state general fund;

(2) in the event that the investigating and seizing agency is the Tennessee Bureau of Investigation then the funds shall be distributed to the state treasurer who shall deposit the funds in a designated account for the agency to be used in their operations;

(3) in the event that the investigating and seizing agency is a local public agency then the funds shall be distributed to its local government when, upon ratification of this Chapter by the local governing body of a municipality, metropolitan government or county governing body by ordinance or resolution, said municipality, metropolitan government or county has authorized the receipt of the said distributed funds and has designated how said funds are to be distributed, which shall be designated for law enforcement, and the court shall make such award and distribution consistent with such ordinance or resolution by the local governing body. When more than one local public agency participated in the investigation and seizure of forfeited property as certified by the attorney general, then the court shall order a distribution according to the participation of each local public agency. Accounting procedures for the

financial administration of said funds shall be in keeping with those prescribed by the comptroller of the treasury.

(c). For purposes of this section a local public agency includes any county or municipal law enforcement agency or commission, any judicial district drug task force established under state law, the district attorney general, or any local department or agency of local government authorized by the attorney general to participate in the investigation.

(d). Funds awarded under this section may not be used to supplement salaries of any public employee or law enforcement officer. Funds awarded under this section may not supplant other local or state funds.

#### SECTION 14. Assistance by other agencies.

The attorney general may authorize any governmental department or agency of this state, any political subdivision thereof, or any other state or federal government to participate in the investigation into the conduct giving rise to forfeiture under this Chapter. The grand jury may provide any records, documents, or evidence received by subpoena to the district attorney general for the enforcement of this Chapter.

#### SECTION 15. Equity Powers of Court.

Any criminal court or general sessions court may conduct such hearings and enter such orders, injunctions, restraining orders, prohibitions, or issue any extraordinary process for the purpose of insuring that any defendant does not use any proceeds directly or indirectly derived from a criminal offense for the purpose of securing an appearance bond or to pay the premium for the same. Any court may require the defendant or bondsman to prove in open court the source of such bond or premium before accepting the same and the burden of proof shall be upon the party seeking the approval or acceptance of the bond.

#### SECTION 16. Immunities.

The attorney general, their assistants and investigators shall not be civilly liable for any acts performed in furtherance of the purposes of this Chapter.

#### SECTION 17. Supplement to other laws.

This Chapter does not supersede any other statute or law relating to forfeiture of property and may be used in conjunction with administrative forfeiture laws. This law pertaining to the forfeiture of property is remedial and shall be liberally construed to effect its purpose. This Chapter shall apply retroactively to all proceeds acquired or received prior to the effective date of this act if the conduct giving rise to forfeiture constituted a criminal offense at the time of the acquisition of the property.

#### SECTION 18. Saving provision.

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to the end the provisions are severable.

#### SECTION 19. Effective Date.

This Chapter shall take effect on July 1, 1997, the public welfare requiring it.